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*Best Sunshine International Ltd*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS**

Imperial Pacific International (CNMI) LLC,  
Best Sunshine International Ltd (BVI);

Plaintiffs,

Vs.

Commonwealth of the Northern Mariana Islands, Commonwealth Casino Commission, CNMI Governor Arnold Palacios, in his official and personal capacities; Edward C. Deleon Guerrero, Chairman of CCC, in his official and personal capacities; Rafael S. Demapan, Vice Chairman of CCC, in his official and personal capacities; Mariano Taitano, Commissioner of CCC, in his official and personal capacities; Martin Mendiola, a former Commissioner of CCC, in his personal capacity; Ramon M. Dela Cruz, a former Commissioner of CCC, in his personal capacity, Does 1-10, Inclusive;

Defendants.

Case No. 1:24-cv-00001

**[PROPOSED] SECOND AMENDED  
COMPLAINT FOR**

- 1. UNCONSTITUTIONAL  
IMPAIRMENT OF CONTRACT  
AND VIOLATION OF THE  
CONTRACTS CLAUSE OF THE  
U.S CONSTITUTION;**
- 2. VIOLATION OF THE DUE  
PROCESS CLAUSES OF THE U.S.  
CONSTITUTION;**

**DEMAND FOR JURY TRIAL**

1  
2  
3 1. Plaintiffs, Imperial Pacific International (CNMI), LLC; (hereinafter referred to as  
4 “IPI”), and Best Sunshine International Ltd (BVI). (hereinafter referred to as “Best Sunshine”)  
5 by and through their undersigned counsels, as and for its complaint against Commonwealth of  
6 the Northern Mariana Islands (“CNMI”), Commonwealth Casino Commission (“CCC”), Arnold  
7 Palacios, Governor of CNMI, in his official and personal capacities; Edward C. Deleon  
8 Guerrero, Chairman of CCC, in his official and personal capacities; Rafael S. Demapan, Vice  
9 Chairman of CCC, in his official and personal capacities; Mariano Taitano, Commissioner of  
10 CCC, in his official and personal capacities; Martin Mendiola, a former Commissioner of CCC,  
11 in his personal capacity; Ramon M. Dela Cruz, a former Commissioner of CCC, in his personal  
12 capacity, and Does 1-10, inclusive; alleges as follows:

### 13 **JURISDICTION**

14 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal  
15 question), and 42 U.S.C. § 1983.

### 16 **VENUE**

17 3. Venue is proper in the federal district court for the Northern Mariana Islands in that  
18 Defendants reside and do business in this District, including business related to the claims  
19 asserted herein, 28 U.S.C. Section 1391 (b) (1), the events on which the claims are based  
20 occurred in this District, 28 U.S.C. Section 1391(b) (2), and the property which is the subject of  
21 this action is located in this District, 28 U.S.C. Section 1391 (b) (2).

### 22 **IDENTIFICATION OF PARTIES**

23 4. Plaintiff IPI is a limited liability company organized under the law of the  
24 Commonwealth of the Northern Mariana Islands, with its principal place of business at PMB 895  
25 Box 10001, Saipan, 96950, Northern Mariana Islands. Its sole member is Best Sunshine  
26 International Ltd. (BVI).  
27  
28

1           5. Plaintiff Best Sunshine is a corporation organized under the law of the British Virgin  
2 Islands, with its principal place of business at P.O Box 957. Offshore Incorporation Centre, Road  
3 Town, Tortola, British Virgin Islands. Best Sunshine is a wholly owned subsidiary of Imperial  
4 Pacific International Holdings Ltd., a publicly traded company on the Hong Kong Stock  
5 Exchange and was incorporated under the laws of Hong Kong, China.

6           6. Defendant COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
7 (“CNMI”) is a government entity lawfully created by the Covenant to Establish a  
8 Commonwealth of the Northern Mariana Islands in Political Union with the United States of  
9 America.

10           7. Defendant Commonwealth Casino Commission (“CCC”) is the casino gaming  
11 regulatory agency of the Commonwealth of the Northern Mariana Islands (“CNMI”) government  
12 that oversees and regulates the activities of the exclusive casino licensee operating in Saipan.  
13 CCC was established pursuant to 4 CMC Section 2313 under PL 18-56 on July 11, 2014. Under  
14 4 CMC Section 2414 (q), CCC has the capacity to “sue civilly.”

15           8. Defendant Arnold Palacios (“Palacios”) is a United States citizen, residing in Saipan,  
16 CNMI. Defendant Palacios is the Governor of the CNMI. Defendant Palacios is being sued in his  
17 official and personal capacities.

18           9. Defendant Edward C. Deleon Guerrero (“Guerrero”), who is a United States citizen,  
19 residing in Saipan, CNMI. Defendant Guerrero is a commissioner and Chairman of CCC.  
20 Defendant Guerrero is being sued in his official and personal capacities.

21           10. Defendant Rafael S. Demapan (“Demapan”), who is a United States citizen,  
22 residing in Saipan, CNMI. Defendant Demapan is a commissioner and Vice Chairman of CCC.  
23 Defendant Demapan is being sued in his official and personal capacities.

24           11. Defendant Mariano Taitano (“Taitano”), who is a United States citizen, residing in  
25 Saipan, CNMI. Defendant Taitano is a commissioner of CCC. Defendant Taitano is being sued  
26 in his official and personal capacities.

14. The true names and capacities of Defendants Does 1-10, inclusive, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each defendant designated herein as a fictitiously named defendant is in some manner responsible for the events and happenings herein referred to, and caused the damage to the Plaintiffs as herein alleged. When Plaintiffs ascertain the true names and capacities of Does 1 -10, inclusive, it will ask leave of this Court to amend its Complaint by setting forth the same.

## FACTUAL ALLEGATIONS

15. In March 2014, the CNMI announced that it would hold a competitive bidding process for the first ever casino license to be issued by the CNMI. On July 8, 2014, the CNMI enacted Public Law 18-56 to allow for the issuance of an exclusive gaming license for the operation of a Casino in the Commonwealth.

16. The CNMI decided to issue such a license because it “was faced with significant economic challenges including a significant reduction of government revenues, unfunded government retirement obligations, reduction of the economy, and lack of economic opportunity for residents” and it determined that “the issuance of an exclusive casino license on the island of Saipan with specific development requires that are meant to provide immediate economic stimulus and long-term benefits to the community” was necessary to address the economic challenges facing the CNMI. **Exhibit A (CLA)**. The CNMI’s authority to issue the license derived from Public Law 18-56.

1           17.     The CNMI looked abroad to solve its economic woes. It did so by “publicly  
2 solicit[ing] proposals from qualified proposers and establish[ing] a selection procedure that  
3 properly and carefully evaluate these proposals based on the promised benefits to the  
4 community[.]” **Exh. A.** Only two proposals were submitted, both by foreign companies.

5           18.     The first proposal was submitted by Best Sunshine International Limited (BVI). As  
6 noted above Best Sunshine is incorporated in the British Virgin Islands. It is wholly owned by  
7 Imperial Pacific International Holdings Ltd., a Chinese investment holding company listed on the  
8 Hong Kong stock exchange. The second proposal was submitted by Marianas Stars  
9 Entertainment, another Hong Kong based investment group.

10           19.     Of the two proposals, the CNMI chose the proposal submitted by Best Sunshine as  
11 the proposal that best responded to the CNMI’s needs and “[Best Sunshine] were chosen to be  
12 the licensee.” **Exh. A.** The CNMI was aware that all of the funds for the development project  
13 would ultimately come from Imperial Pacific International Holdings Ltd. through Best Sunshine.

14           20.     CNMI recognized that “the granting of a long-term exclusive casino license  
15 provide[d] an extremely valuable significant government benefit to [Best Sunshine]. **Exh. A.**  
16 Although CMNI chose Best Sunshine “to be the licensee,” it determined that the license awarded  
17 to Best Sunshine should “be held by a Commonwealth entity and required Best Sunshine to form  
18 a domestic entity, [IPI], which shall be the designated licensee (“Licensee”) and who shall  
19 assume all promises obligations and agreements previously made [by] Best Sunshine  
20 International Limited in this matter.”

21           21.     Accordingly, Best Sunshine formed IPI to enter into the CLA with CNMI. IPI,  
22 through one of its directors, Ms. Cai Ling Li, executed the CLA on August 12<sup>th</sup>, 2014. The  
23 Lottery Commission executed the CLA for the CNMI. The Acting Attorney General of the  
24 CNMI, Mr. Gilbert Birnbrich, signed the CLA as well.

25           22.     Paragraph 1 of the CLA expressly provided that “This License Agreement is  
26 intended to implement and supplement the terms of the Act.” Paragraph 1 defined the “Act” as  
27 Public Law 18-56, which is the law that empowered the CNMI to issue a casino license. The  
28

1 CNMI and IPI made the Act a part of the CLA through inclusion of a copy of the Act as  
2 Attachment A. Section 7 of the Act empowers the CCC “to promulgate such rules and  
3 regulations ... to ensure the suitability and compliance with the . . . contractual obligations of  
4 owners, operators and employees of casinos.”

5 23. In recognition of the fact that it was Best Sunshine and Imperial Pacific  
6 International Holdings Ltd. who ultimately stood behind this development project, the CNMI and  
7 IPI also included the “Casino License Application of Best Sunshine International Limited” as  
8 Attachment E to the CLA and the “Business Plan of Best Sunshine International Limited” as  
9 Attachment F to the CLA.

10 24. Paragraph 2 of the CLA provided that “[u]pon issuance of the Casino License the  
11 authority of the Lottery Commission over this License shall cease and the Office of the Governor  
12 shall have authority for enforcement of the terms and conditions of this License Agreement  
13 except for enforcement of the terms and conditions of this License Agreement except for the  
14 elements specifically identified for control by the Casino Commission, as identified in section 3  
15 below. **Exh. A.** Section 3 identifies the “Commonwealth Casino Commission” (or “CCC”) as a  
16 commission established pursuant to the Act that “shall have authority for the approval of all  
17 casino operations and gaming activities conducted under the Casino License... The authority of  
18 the Casino Commission includes the ability to suspend or revoke the Casino License, in  
19 accordance with the requirements of the Commonwealth Administrative Procedure Act, for  
20 violation of the Rules.” In essence, the CCC replaced the Lottery Commission as the government  
21 entity charged with authority over the License and the CLA as far as the gaming operation of the  
22 licensee is concerned.

23 25. Under Article 25 of the CLA, “Licensee shall not be in default for any failure or  
24 delay in the performance due under this License Agreement if such failure or delay is due to  
25 causes beyond reasonable control including, but not limited to: ... (“Force Majeure Event”).  
26 Invocation of force majeure by the Licensee shall not excuse any payment obligations to the  
27 Commonwealth where the grounds and or purposes for such payments have already accrued.”  
28

1           26. Under the CLA, among other obligations, IPI would pay \$20 million annually to a  
2 Community Benefit Fund. IPI dutifully paid the \$20 million contribution to the Community  
3 Benefit Fund each year prior to 2018.

4           27. Under the CLA, among other obligations, IPI would pay a fifteen million dollars  
5 (\$15,000,000.00) annual Casino License Fee. IPI dutifully paid the annual license fee each year  
6 between 2014 and 2019.

7           28. On July 11, 2014, CNMI promulgated Public Law 18-56, which created CCC.  
8 Public Law 18-56 granted certain powers and duties to CCC and it was codified as 4 CMC §  
9 2314.

10           29. Under 4 CMC § 2314, CCC assumed judicial functions and has jurisdiction over  
11 certain cases and controversies, including cases involving the interpretation and adjudication of  
12 the CLA.

13           30. On December 4, 2015, CNMI promulgated Public Law 19-24, which imposes a new  
14 obligation on IPI to pay CCC an annual “Casino Regulatory Fee” of three million dollars  
15 (\$3,000,000.00) on or before October 1 of each year beginning October 1, 2015 (“Regulatory  
16 Fee Statute”). That fee is due to CCC “regardless of the actual costs incurred by the [CCC].” 4  
17 C.M.C. Section 2309 (a). IPI paid the Casino Regulatory Fee each year from 2015 through 2019.

18           31. By the operation of PL 19-24, the funding of CCC is almost completely originated  
19 from the payment of the annual regulatory fee by IPI and its affiliates. See **Exhibit B**.

20           32. On or about October 28, 2016, CCC issued Commonwealth Casino Commission  
21 Rules and Regulation, which is codified as NMIAC § 175 -10.1.

22           33. Due to a number of force majeure events and the suspension of the casino license  
23 by CCC, IPI has been unable to make the payment for the annual regulatory fee, annual license  
24 fees and Community Benefit Fund contribution for a few years.

25           34. Pursuant to NMIAC § 175 -10.1-601, failure to comply with the requirements set  
26 forth in the CLA is an unsuitable method of operation and a major offense subject to penalty,  
27 including but not limited to license revocation.  
28

35. Pursuant to NMIAC § 175 -10.1-105, CCC has the “sole authority to amend or revoke the license granted to” IPI for “operating in an unsuitable manner due to violations of law, breaches of the license or violations of the regulations promulgated by the Commission, as well as any other reason for revocation or termination stated in the License.”

**2020 CCC ENFORCEMENT ACTIONS**

36. The Executive Director of the CCC initiated five complaints against IPI in 2020. Later consolidated into Enforcement Action 2020-001 (encompassing actions 2020-001 and 2020-002) and Enforcement Action 2020-003 (encompassing actions 2020-003, 2020-004 and 2020-005), as follows:

37. Complaint 2020-001 included claims for violations of the CLA based on IPI’s failure to make Community Benefit Contributions;

38. Complaint 2020-002 included claims for violations of Commonwealth law and the CLA based on IPTs failure to pay the Annual License Fee for 2020;

39. Complaint 2020-003 included claims for violation of a prior CCC order (2020-003) requiring IPI to maintain at least \$4.2 million in cash or cash equivalents in a bank in the CNMI or United States and for IPTs executives to detail the means by which they would comply with that order;

40. Complaint 2020-004 included claims for violations of a prior CCC order (2020-004) requiring IPI to pay accounts payable over 89 days old and to certify compliance with that order;

41. Complaint 2020-005 included claims for violation of Commonwealth law and the CLA for IPTs failure to pay the Casino Regulatory Fee of \$3,150,000.00 for 2020.

42. On April 22, 2021, the CCC held a hearing on these enforcement actions and issued Order No: 2021-002. See **Exhibit C**. In the Order, CCC assumed the jurisdiction to interpret and adjudicate the claims filed by the Executive Director of CCC, and made the finding that IPI violated the CLA.



1           43.     The Order suspended IPI's gaming license, ordering IPI to pay a total of \$18.65  
2 million that it found was due under the CLA's Annual License Fee and Annual Regulatory Fee,  
3 and imposing a total of \$6.6 million in penalties against IPI. The Order also required IPI to  
4 comply with previous Orders issued by the CCC.

5           44.     On May 21, 2021, IPI appealed the CCC's Order in the Superior Court for the  
6 Commonwealth of the Northern Mariana Islands, arguing that the CCC's Order was arbitrary,  
7 capricious, an abuse of discretion and otherwise not in accordance with law and unwarranted by  
8 the facts. IPI's primary argument was that the CCC failed to recognize the doctrine of force  
9 majeure despite the presence of the force majeure provision in the CLA and the clear, severe  
10 impact of a force majeure event, the COVID-19 pandemic, on IPI's ability to comply with its  
11 obligations.

12           45.     On March 15, 2022, the Superior Court of CNMI affirmed the CCC's order,  
13 applying a very deferential standard of review.

14           46.     On April 11, 2022, IPI appealed the Order issued by the Superior Court of CNMI to  
15 the Supreme Court of CNMI.

16           47.     On August 25, 2023, CNMI Supreme Court affirmed the trial court's ruling in part  
17 and reversed in part and asked CCC to "decide on a reasonable deadline for IPI to pay" the  
18 annual license fees for 2020 and the following years.

19           48.     After the ruling of CNMI Supreme Court was published, IPI informed Defendant  
20 CCC, as an agent for CNMI, that it disputed it was obligated to pay the annual license fees after  
21 its casino license was suspended by CCC in April 2021.

22           49.     After the ruling of CNMI Supreme Court was published, IPI informed Defendant  
23 CCC, as an agent for CNMI, that it disputed it was obligated to pay the annual regulatory fees  
24 after its casino license was suspended by CCC in April 2021.

25           50.     On November 30, 2023, CCC issued a "Notice of Payment Deadline" and  
26 determined that a "reasonable deadline" for IPI to pay the \$62,010.280.00 casino license fees for  
27  
28

1 year 2020 to 2023 at \$15,502.570 annually is “30 days from receipt of this notice.” See **Exhibit**  
2 **D.**

3 51. Under the CLA, Article 2 “Authority for Enforcement of this License Agreement”  
4 states that the Office of the Governor shall have authority for enforcement of the terms and  
5 conditions of the CLA.

6 52. Under the CLA, Article 30 “Disputes” states that all disagreements between the  
7 Parties as to the terms or requirements of CLA shall be resolved through a defined nine steps  
8 dispute resolution process, including Presentation of Dispute, Meet and Confer, Non-binding yet  
9 arbitration, and Litigation.

10 53. IPI has a bona fide argument that the annual license fee accrued during the period  
11 when its business was shut down due to covid-19 as force majeure should be excused rather than  
12 delayed.

13 54. IPI has a bona fide argument that 30 days would be not a reasonable time to make  
14 the annual license fee payment, if it has such obligations to pay.

15 55. IPI has a bond fide argument that CCC has no jurisdiction to resolve dispute  
16 between IPI and CNMI with respect to whether annual license fee accrued during the period  
17 when its business was shut down due to covid-19 as force majeure should be excused rather than  
18 delayed.

19 56. IPI has a bond fide argument that IPI did not waive its right under the CLA to have  
20 dispute over the annual license fee payment resolved through the bargained for dispute resolution  
21 process outlined in the CLA.

22 57. IPI has a bona fide argument that the annual license fee accrued during the period  
23 when its business was shut down due to suspension by CCC on April 22, 2021, should be  
24 excused, and any dispute thereof should be resolved through the bargained for dispute resolution  
25 process outlined in the CLA.

26 58. Under the CLA, CCC may not enforce the terms of the CLA when it is not related  
27 to the gaming operation, therefore it is beyond CCC’s authority to demand IPI to make payment  
28

1 for the annual license fees and threat to revoke IPI's license based upon the unresolved dispute  
2 related to annual license fee payment.

3 **2021 ENFORCEMENT ACTIONS**

4 59. On or about September 17, 2021, Mr. Andrew Yeom, in his official capacity as  
5 Executive Director of CCC, filed five complaints against IPI with CCC.

6 60. Complaint No. 2021-001 alleges breach of the CLA by IPI for its failure to pay the  
7 annual license fee for year 2020 under the CLA. **See Exhibit E.**

8 61. Complaint No. 2021-002 alleges that IPI failed to maintain minimum capital  
9 requirements set by CCC. **See Exhibit F.**

10 62. Complaint No. 2021-003 alleges that IPI failed to pay the annual regulatory fee for  
11 year 2020. **See Exhibit G.**

12 63. Complaint No. 2021-004 alleges breach of the CLA by IPI for its failure to pay the  
13 annual license fee for year 2021 under the CLA. **See Exhibit H.**

14 64. Complaint No. 2021-005 alleges that IPI failed to pay the annual regulatory fee for  
15 year 2021. **See Exhibit I.**

16 65. Proceedings for Complaints No. 2021-001 to 2021-005 was stayed since May 23,  
17 2022, because the Court issued a TRO. See ECF No. 11 of Case No. 1:22-cv-00007.

18 66. The stay was later lifted due to the reversal by the United States Court of Appeals  
19 for the Ninth Circuit. See ECF No. 38-1 of Case 22-16630.

20 67. For case 22-16630, IPI filed a petition for a writ of certiorari with the U.S. Supreme  
21 Court on November 20, 2023, with a case number of 23-522. See ECF No. 59 of Case No. 1:22-  
22 cv-00007. U.S. Supreme Court did not grant the petition for a writ of certiorari.

23 **2023 ENFORCEMENT ACTIONS**

24 68. On or about December 13, 2023, Mr. Andrew Yeom, in his official capacity as  
25 Executive Director of CCC filed a motion with CCC and requested CCC to issue an order setting  
26 a Revocation Hearing for Complaints No. 2021-002 and 2021-003. **See Exhibit J.**

69. On December 27, 2023, IPI filed an action before this Court against CCC, with Case No. 1:23-cv-00016.

**2024 ENFORCEMENT ACTIONS**

70. On January 26, 2024, IPI and CCC stipulated to dismiss the case No. 1:23-cv-00016 without prejudice.

71. Since January 26, 2024, IPI and CCC engaged in active settlement negotiation and stipulated to postpone the revocation hearing till February 28, 2024. See **Exhibit K**.

72. However, despite these ongoing settlement discussions, CCC proceeded with the revocation hearing scheduled for February 28, 2024.

73. On February 23, 2024, IPI filed the instant action, 1:24-cv-00001, (ECF No. 1) before this Court. On February 26, 2024, IPI filed an emergency motion for TRO (ECF No. 2).

74. On February 27, 2024, the Court conducted a hearing where counsels for IPI and Assistant Attorney General Keisha Blaise of CNMI, and John Brendan Layde, counsel for the Governor, appeared at the hearing. At the conclusion of the hearing, the court denied the motion for TRO and issued a Memorandum Decision on February 29, 2024. ECF No. 9.

75. After the motion for TRO was denied, the revocation hearing started on February 28, 2024, and stretched three days from February 28, 2024, to March 1, 2024.

76. At the revocation hearing, Executive Director of CCC, Mr. Andrew Yeom, was represented by Assistant Attorney General of CNMI, Keisha Blaise and Alison Nelson; IPI was represented by Michael Chen. The presiding hearing commissioner was Vice Chairman Rafael S. Demapan, who was also the Acting Chairman of CCC due to the absence of Chairman Guerrero from the island. In addition to Vice/Acting Chairman Demapan, the other three commissioners, Commissioners Cruz, Taitano and Mendiola all functioned as the hearing commissioners at the revocation hearing. Chairman Guerrero participated at the revocation hearing remotely as a private citizen at the hearing.

77. Media was permitted to attend the hearing throughout and a number of news articles about the proceeding were posted online and in print in CNMI.

1           78. During the revocation hearing, attorney Michael Chen made four oral motions to  
2 disqualify the four hearing commissioners and gave the following reasons for the motion for  
3 disqualifications:

- 4           • All four hearing commissioners are paid by CCC, which is financed exclusively by  
5 the regulatory fee, a major defense by IPI is the constitutionality of the underlying  
6 regulatory fee statute and regulations, it would be “professional suicide” for the  
7 commissioners to rule that the underlying regulatory fee statute is unconstitutional.
- 8           • Based upon the testimony produced at the hearing, all five commissioners, through  
9 the official monthly CCC public meetings and private communication with the  
10 executive director of CCC, had prior knowledge about the underlying claims, i.e. the  
11 alleged failure of IPI to maintain the minimum capital requirement and the failure to  
12 pay the regulatory fees in year 2020.
- 13          • All five commissioners<sup>1</sup> were involved in issuing Commission Orders 2020-003 and  
14 2021-002. The current complaints before the Commission are seeking to enforce  
15 Commission Orders 2020-003 and 2021-002. The Commissioners are asked to self-  
16 affirm decisions they made earlier.
- 17          • The disqualification of the five commissioners as the hearing commissioners would  
18 not cripple the Commission, as provided by the regulation and cited by the  
19 Memorandum Decision for the TRO, (which became available in the midst of the  
20 revocation hearing), the commissioners could appoint a non-commissioner hearing  
21 officer to conduct the revocation hearing, which is a quasi-judicial proceeding.

22           79. The oral motions to disqualify the commissioners were brought at least three times,  
23 once when the grounds for disqualification became clear, once at the closing argument for each  
24

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25  
26 <sup>1</sup> Attorney Chen misspoke at the hearing about the involvement of Commissioner Martin Mendiola of the  
27 two commission orders. Commissioner Mendiola was not involved in Commission Order 2020-003 and  
28 2021-002.

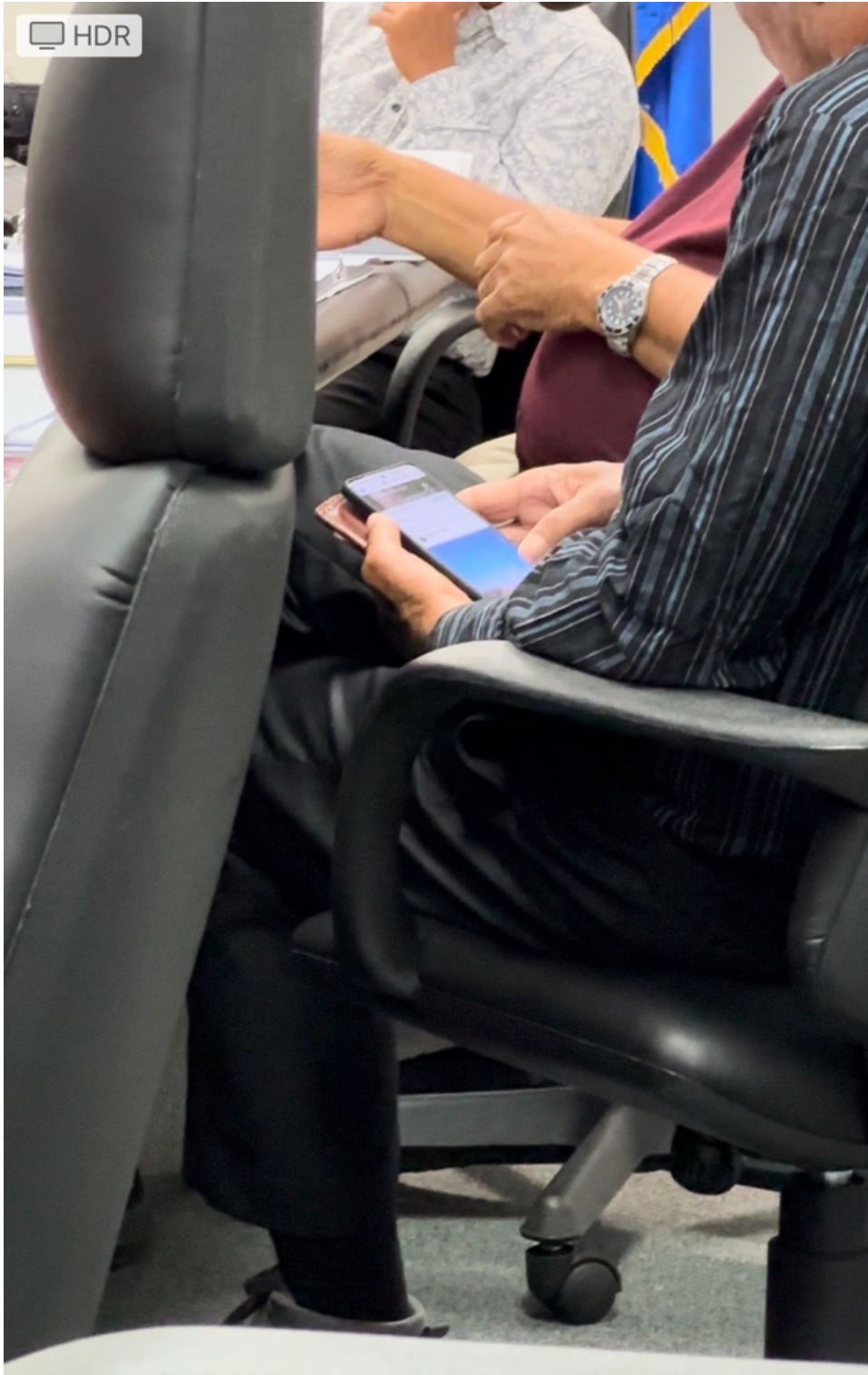
1 complaint. Commissioners did not make a ruling on the motions to disqualify during the  
2 proceeding and continued to proceed with the revocation hearing until it was adjourned on  
3 March 1, 2024.

4 80. There were a garden variety of irregularities took place at the hearing. Here are just  
5 a few examples:



19 Executive Director of CCC conversed ex parte with the hearing commissioner.  
20  
21  
22  
23  
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Hearing Commissioner was browsing his phone extensively during the proceeding.

81. After the adjournment of the revocation hearing, on March 6, 2024, Governor Arnold I. Palacios caused to publish an article on local newspapers. In the article, Mr. Palacios made remarks to contradict the testimony of IPI's witness, Mr. Howyo Chi and put the credibility of Chi into question. See **Exhibit L**.

82. On March 25, 2024, IPI learned that CCC announced that it planned to conduct a deliberation and voting on the casino license revocation hearing on April 2, 2024.

83. On March 27, 2024, IPI filed a second Emergency Motion for a TRO. ECF No. 24.

84. On March 28, 2024, IPI learned from CCC that CCC postponed the deliberation and voting till April 9, 2024.

85. On April 5, 2024, the Court denied the second Emergency Motion for TRO. ECF No. 36.

86. On April 8, 2024, IPI filed a motion to disqualify before CCC, and a motion to ask CCC to declare the Feb 2024 Revocation Hearing invalid. See **Exhibit M**. The motion is currently pending before CCC.

#### **APPARENT AND POTENTIAL CONFLICT OF INTERESTS**

87. The \$3M annual regulatory fee paid by IPI to CCC is the lion's share of CCC's revenue. Here is a table of the revenue of the Commission from year 2018 to 2022:

	2018	2019	2020	2021	2022
Casino Regulatory Fees	\$3,000,000	\$3,000,000	\$3,000,000	\$0	\$0
Other Regulatory Fees	\$151,242	\$100,328	\$106,500	\$20,214	\$15,000
General Fund	\$0	\$1	\$1	\$1	\$1

ECF No. 24-10 Exhibit J. Commission Annual Reports.



1 88. It is clear that the Commission cannot survive financially without the \$3M annual  
2 license fee paid by IPI. It would be “professional suicide” for the Commissioners to be persuaded  
3 by IPI’s argument that the \$3M annual regulatory fee statute is unconstitutional.

4 89. It is also clear that the legislative appropriation process has not worked very well  
5 for the Commission and the Commissioners when the annual regulatory fee is not paid.

6 90. Based upon the reports filed by CCC, the board of commissioners were paid  
7 \$313,774.00 in year 2018, \$324,996.00 in year 2019, \$316,871.00 in year 2020, \$322,234.00 in  
8 year 2021, \$272,461.00 in year 2022.

9 91. Based upon information and belief, the Commissioners have not been paid for their  
10 services in year 2023 and 2024.

11 92. Based upon information and belief, under the direction of Governor Palacios, in  
12 recent months, CNMI loaned certain money to CCC to cover its expenses, including payments to  
13 the Commissioners of CCC.

14 93. Based upon information and belief, the revocation hearing is used as a leverage by  
15 Defendant CCC, to pressure IPI to pay the annual regulatory fees, because “Plaintiff could moot  
16 the revocation issues by simply remitting the owed amounts,” as argued by CNMI. (ECF No.  
17 27.)

18 94. Based upon information and belief, Defendant CNMI and Defendant Palacios in his  
19 official and personal capacity colluded with CCC and its commissioners, to initiate and maintain  
20 the revocation proceeding against IPI and use CCC as the collection agent to collect the unpaid  
21 and disputed annual license fees by exercising the power to revoke as a threat.

22 95. Based upon information and belief, Defendants CNMI and Palacios conspired with  
23 CCC and its commissioners to conduct the revocation hearing by refusing to allow the  
24 commissioners to recuse from the revocation hearing as the hearing and voting commissioners.

25 **CONSTITUTION AND STATUTORY GROUNDS**

26 96. The Contracts Clause of the United States Constitution (U.S. Const. Art. I. Section  
27 10, cl. 1) prohibits any state from passing a “law impairing the obligation of contracts.”  
28

-18-

1           104. The annual regulatory fee statute, as applied to IPI during the Covid-19 period  
2 when its business was shut down with zero revenue for the sakes of public health and welfare, is  
3 an unconstitutional impairment of its contractual right under the force majeure clause within the  
4 CLA.

5           105. IPI believes that the application of the annual regulatory fee statute, without giving  
6 due consideration to an apparent and significant force majeure event and the force majeure  
7 clause in the CLA, is unconstitutional because it deprives IPI of a bargained for right: right to be  
8 free from default for any failure or delay in paying the fees in the event of force majeure. The  
9 impairment is substantial.

10           106. The requirement for IPI to maintain a minimum capital under applicable CCC  
11 regulations, as applied to IPI during the Covid-19 period where its business was shut down with  
12 zero revenue for the sakes of public health and welfare, would be an unconstitutional impairment  
13 of its contractual right under the force majeure clause within the CLA.

14           107. IPI believes that the application of the minimum capital requirement, without giving  
15 due consideration to an apparent and significant force majeure event and the force majeure  
16 clause in the CLA, is unconstitutional because it deprives IPI of a bargained for right: right to be  
17 free from default for any failure or delay in the performance due [under statute and regulation  
18 enacted in accordance with the CLA] in the event of force majeure. The impairment is  
19 substantial.

20           108. The annual regulatory fee statute, as applied to IPI during the period when its casino  
21 license was suspended, is an unconstitutional impairment of its contractual right because it  
22 frustrates the very purpose of the CLA for lack of consideration.

23           109. IPI believes that the application of the demand for payment of the annual regulatory  
24 fee, accrued during the period when IPI's casino license was suspended is unconstitutional  
25 because it frustrates the very purpose of the CLA. The impairment is substantial.  
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1           110. CNMI and IPI had an existing contractual relationship that provides that the  
2 interpretation of the CLA and the resolution of disputes arising from the CLA shall be subject to  
3 a defined nine steps dispute resolution process under Article 30 of the CLA.

4           111. The CLA grants the Governor's Office the right to enforce the terms and conditions  
5 of the CLA, the CLA also outlines the nine steps dispute resolution process to resolve disputes  
6 related to the terms of the CLA. The issue whether IPI is obligated to pay, rather than merely  
7 delay, the annual license fee payment accrued during the force majeure event is an issue should  
8 be resolved through the nine-step resolution process by interacting with the Governor's office.

9           112. Under the direction and/or in collusion with CNMI and the Governor, CCC and its  
10 Commissioners demand the payment of the disputed annual license fees accrued during the force  
11 majeure event, for the benefits of CNMI, by exercising CCC's regulatory power to revoke, is an  
12 impairment of the CLA.

13           113. The CLA grants the Governor's Office the right to enforce the terms and conditions  
14 of the CLA, the CLA also outlines the nine steps dispute resolution process to resolve disputes  
15 related to the terms of the CLA. The issue of when would be a "reasonable deadline" for IPI to  
16 pay the annal license fee accrued during the force majeure event is an issue should be resolved  
17 through the nine-step resolution process by interacting with the Governor's office.

18           114. Under the direction and/or in collusion with CNMI and the Governor, CCC and its  
19 Commissioners demanded immediate payment from IPI for annual license fees accrued during  
20 the force majeure event for the benefits of CNMI, through exercising its regulatory power to  
21 revoke, is an impairment of the CLA.

22           115. The CLA grants the Governor's Office the right to enforce the terms and conditions  
23 of the CLA, the CLA also outlines the nine steps dispute resolution process to resolve disputes  
24 related to the terms of the CLA. The issue whether IPI is obligated to pay the annual license fee  
25 payment accrued during the period when IPI's license was suspended is an issue should be  
26 resolved through the nine-step resolution process by interacting with the Governor's office.  
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1           122. The Statute, 4 CMC §2314, gives CCC broad and sometimes exclusive authority to  
2 interpret the CLA and adjudicate disputes arising from the CLA. The Statute also gives CCC  
3 broad policing power to regulate IPI as a casino operator. CCC is acting in a judicial or quasi-  
4 judicial capacity when interpreting the CLA and adjudicating disputes arising from the CLA.  
5 Defendant CCC and its commissioners have a direct, substantial, arguably personal, pecuniary  
6 interest in finding IPI in violation of the CLA, given the fact that CCC is funded exclusively by  
7 the regulatory fees that are ordered to be paid by IPI and its affiliates to CCC.

8           123. 4 CMC §2314 and NMIAC § 175 -10.1 deprive IPI of due process to have its  
9 claims and defenses heard before a disinterested and impartial arbiter as guaranteed by the Due  
10 Process Clause of the Fourteenth Amendment of the U.S. Constitution.

11           124. Acting through CCC, CCC commissioners have demonstrated such predisposed  
12 tenancy to find against IPI in the 2020 enforcement actions. For example:

- 13           • CCC determined that thirty days after notification is a “reasonable deadline” for IPI  
14 to come up with \$62 million dollars after IPI was ordered to close its business since  
15 early 2020.
- 16           • Despite the apparent conflict of interests where CCC commissioners have personal,  
17 direct, and pecuniary interests in the outcome of the revocation hearing conducted  
18 between February 28, 2024 and March 1, 2024; despite an available procedural  
19 alternative by appointing an impartial hearing officer to conduct the revocation  
20 hearing, despite multiple motions for disqualification made by IPI’s attorney at the  
21 hearing and post hearing, Defendants Demapan, Taitano, Mendiola and Cruz refused  
22 to disqualify themselves as the hearing commissioners.
- 23           • Despite the apparent conflict of interests where CCC commissioners have personal,  
24 direct, and pecuniary interests in the outcome of the revocation hearing conducted  
25 between February 28, 2024 and March 1, 2024; despite multiple motions for  
26 disqualification made by IPI’s attorney at the hearing and post hearing, Defendants  
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Guerrero, Demapan, Taitano, Mendiola and Cruz refused to disqualify themselves as the voting commissioners to deliberate and vote on the renovation hearing.

125. Based upon information and belief, the refusal to disqualify themselves by the Commissioners from the revocation hearing and deliberation was at the direction of CNMI and Governor Palacios.

126. IPI has incurred and will continue to incur attorney's fees and costs in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of 42 U.S.C. Section 1988 (b).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

1. For the Court to issue a declaration that the current regulatory scheme established by 4 CMC §2314 and NMIAC § 175 -10.1, where CCC is not and cannot function as an impartial decision maker, is unconstitutional violation of IPI's due process rights;
2. For the Court to issue a declaration that the current regulatory scheme established by 4 CMC §2314 and NMIAC § 175 -10.1, when its enforcement violates the force majeure clause and dispute resolution clause of the CLA is unconstitutional impairment of the CLA;
3. For the Court to issue a declaration that the current regulatory scheme established by 4 CMC §2314 and NMIAC § 175 -10.1, when its enforcement frustrates the purposes of the CLA by imposing regulatory fees for the period when IPI's casino license was suspended, is unconstitutional impairment of the CLA;
4. For the court to issue an injunction that Defendants may not exercise any power granted by 4 CMC §2314 and NMIAC § 175 -10.1, as long as CCC, as an instrument under the control or undue influence of the Defendants CNMI and Governor Palacios , is not and cannot function as an impartial decision maker;
5. For the Court to issue an injunction against Defendants preventing the assumption of jurisdiction by CCC to interpret the terms of CLA and/or to adjudicate claims arising

out of the CLA, when such disputes are not related to the gaming operation of IPI,  
and the scope of such disputes shall be narrowly construed;

6. For the Court to order Defendants to vacate, nullify any and all adverse  
administrative decisions against IPI that were based upon the assumption of  
jurisdiction by CCC to interpret the terms of CLA and/or to adjudicate claims arising  
out of the CLA, when such disputes are not related to the gaming operation of IPI,  
and the scope of such disputes shall be narrowly construed;
7. For all costs of suit incurred herein;
8. For reasonable attorney's fees incurred herein;
9. For such other and further relief as the Court may deem just and proper.

Dated: May 17, 2024  
Saipan MP

Respectfully submitted,

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